

EXHIBIT A

ADDENDUM

**SUPPLEMENTAL PROTOCOLS GOVERNING DEPOSITIONS OF CHINESE
NATIONALS RESIDING IN MAINLAND CHINA**

A. Scope

1. This Addendum shall govern certain aspects of the depositions of Chinese nationals residing in mainland China.

2. Defendants' position is that any Chinese National who agrees to be deposed in this litigation is being deposed on a voluntary basis as a result of the restrictions imposed by the Hague Evidence Convention and China's Civil Procedure Law, as well as this Court's limited subpoena power over Chinese nationals residing in mainland China. Plaintiffs disagree.

3. ~~2-~~This Addendum supplements and incorporates the provisions of the Deposition Protocol (CMO No. 20), including the COVID-19 Protocols set forth therein, to which it is appended. In the event of a conflict between the Deposition Protocol and this Addendum, the Addendum shall control.

4. ~~3-~~The Federal Rules of Civil Procedure, the Federal Rules of Evidence, and the Local Rules of the District of New Jersey shall apply to all depositions of Chinese nationals residing in mainland China.

5. Defendants' position is that China's privacy and state secret laws are also applicable to the testimony of any witness deposed pursuant to this Addendum. Plaintiffs disagree.

6. ~~4-~~Nothing in this Addendum shall be construed as a waiver of any witness' or party's defense of lack of personal jurisdiction. ~~to the extent otherwise preserved.~~

Commented [AS1]: Are you including all deponents here? High level executives? 30 b 6? This is too broad. It really is not needed. A1 says it governs the depositions that take place, there is no need to get into why the depositions are taking place.

Commented [AS2]: Isn't this issue going to be addressed based on the briefing for the CMC at the end of the month? Is this just a placeholder?

B. Restrictions Affecting Deposition Location

7. ~~5.~~ Defendants represent that Chinese nationals traveling from mainland China to another country for a deposition generally require a visa or permit issued by the destination country to enter the destination country; this includes Hong Kong. ~~See Immigration Department of the Government of the Hong Kong Special Administrative Region, *Arrangements for Entry to the Hong Kong Special Administrative Region (HKSAR) from the Mainland China*, available at <https://www.immd.gov.hk/eng/services/visas/overseas-chinese-entry-arrangement.html#a>.~~¹

8. ~~6.~~ Defendants represent that from time-to-time Chinese nationals residing in mainland China may have to abide by certain intra-China travel restrictions imposed by the Chinese~~ese~~ government due to COVID-19.¹²

9. ~~7.~~ In addition, Defendants represent that countries have imposed travel restrictions, including entry bans, on Chinese nationals seeking entry from mainland China due to COVID-19.²³ For example, as of ~~INSERT DATE ADDENDUM IS FILED~~ December 8, 2020, Chinese nationals traveling from mainland China to Hong Kong are required to quarantine

¹ See Immigration Department of the Government of the Hong Kong Special Administrative Region, *Arrangements for Entry to the Hong Kong Special Administrative Region (HKSAR) from the Mainland China*, available at <https://www.immd.gov.hk/eng/services/visas/overseas-chinese-entry-arrangement.html#a>.

¹² See U.S. Embassy & Consulates in China, Covid-19 Information, U.S. Dep't of State (last updated Oct. 16, 2020), available at <https://china.usembassy-china.org.cn/covid-19-information/> (noting "[i]f an area of China has resurgence of cases, local authorities may restrict intercity and interstate travel.").

²³ See, e.g., *Interactive Map of Travel Restrictions*, Kayak (last accessed Oct. 19, 2020), available at <https://www.kayak.com/travel-restrictions>; *U.S. Restrictions*, Centers for Disease Control and Prevention (last accessed Oct. 19, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/travelers/from-other-countries.html> (noting ban on Chinese nationals from entering the United States).

Commented [AS3]: Plaintiffs have no intention of deposing witnesses in China. Defense has made it clear that this is not feasible.

for at least 14 days upon arrival to Hong Kong and for at least 14 days upon return to mainland China.³⁴

C. **Protocols Applicable to Depositions Hereunder**

10. ~~8-Location:~~ Unless otherwise agreed, a Chinese national residing in mainland China will travel from mainland China to Hong Kong ~~or another agreed location~~ for the deposition, including for a deposition taken via videoconference. ~~The parties shall endeavor to utilize a location that causes the least difficulty due to differences in time zones.~~

~~9-Witness Costs:~~ Unless otherwise agreed, Defendants shall bear the cost of the witness' travel between mainland China and Hong Kong or other agreed location, meals, and lodging, as selected by the witness, for the deposition.

11. ~~10-Start and Stop Times and Length:~~ The parties shall endeavor to conduct depositions subject to this protocol during regular business hours, but recognize that differences in time zones will require flexibility and compromise. This may also involve the need to conduct depositions in shorter blocks of time over the course of more days. Length: Unless otherwise agreed or ordered, a deposition taken pursuant to this Addendum will last for seven (7) hours in accordance with the time zone in which the witness is located for the deposition, as provided for under the Federal Rules of Civil Procedure. The length of a deposition subject to this Addendum that utilizes translation services may be increased by 75% in accordance with the Deposition Protocol (see CMO No. 20). Depositions taken via video between remote locations will need to be conducted in shorter blocks of time in order to accommodate the parties. The length of a deposition subject to this Addendum may be increased due to delays caused by technical

Commented [A54]: The Court deferred on this section – but if it is going to be included we need to preserve the agreement to shorten the blocks of time.

³⁴ See U.S. Consulate General Hong Kong & Macau, COVID-19 Information, U.S. Dep't of State (last updated Oct. 19, 2020), available at <https://hk.usconsulate.gov/covid-19-information/> <https://hk.usconsulate.gov/covid-19-information/>.

problems, for example resulting from videoconference connectivity interruptions, by the amount of time of such delays, which shall be recorded by the stenographer and videographer. In the event translation services and/or technical problems cause the deposition to extend beyond the time block agreed for a deposition, or to be delayed for a significant length of time, the witness ~~or~~ and examining counsel may elect to extend the deposition to a ~~second~~ consecutive day, or another day if the next day is not feasible for continuation, ~~or another day if the next day is not feasible for continuation~~.

Commented [A55]: I don't know why you crossed this out. Why not recognize that this may be an issue? We cannot agree to the order providing it has to be the next day and that is in your interest too – what if one of your witnesses is committed to something else the next day?

~~11.~~

12. **Notice:** After counsel, through consultation in accordance with this Addendum, have made good faith efforts to agree upon a date and mutually convenient location for the deposition(s), the Noticing Party shall serve a Notice or an amended Notice reflecting the agreed upon date(s), location(s), and start time(s) based on Hong Kong Standard Time, or the time zone of the other agreed location. The Parties acknowledge that sufficient notice is necessary so the witness and all other attendees, including counsel, translators, and stenographers/videographers may make the necessary travel arrangements and obtain the necessary travel documentation, as applicable.

~~13. **COVID-19 Travel Restrictions:** Counsel are expected to cooperate and coordinate the scheduling of depositions hereunder on a good faith basis, taking into account the status of COVID-19 travel restrictions.~~

~~14. **Objections:**~~

~~15. **Attendance:**~~

~~13.~~ **16. Observance of China's Holidays:** Depositions pursuant to this Addendum shall not be noticed for dates during periods Chinese are holidays observed, including the

Chinese New Year, for which the period of observance is from February 8, 2021 through February 26, 2021.

17. Disparagement:

18. Exhibits: ~~If exhibits containing foreign languages (i.e., non-English language content) will be translated for depositions subject to this Addendum, such exhibits, the deposing party may if it chooses to do so, send to counsel for the deponent along with certified human translations of such exhibits containing foreign languages, in advance of the deposition, at least 14 days prior to the deposition. These certified human translations must be provided in two electronic formats: (1) PDF format and (2) an editable text format (e.g., Microsoft Word or Excel). Counsel representing a deponent may object to any translations and, at the deponent's expense, provide proposed corrections to translations or may provide their own alternative certified human translations no less than 7 days in advance of the deposition. Counsel for the parties are expected work cooperatively to agree on the translated versions of the translated exhibits no less than 2 days in advance of the deposition. Counsel for the deponent may raise with the Court any unresolved objections at a later date, as necessary.~~

Commented [AS6]: To be discussed — this is a long gap. Also, what other holidays are being referenced here.

Commented [AS7]: This is too broad — all holidays are not equal impediments to depositions. If you want to include this provision we need to define exactly when you want to black out.

Commented [AS8]: Already addressed in primary protocol.

Summary report:	
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Intelligent Table Comparison: Active	
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<u>Table Insert</u>	0
Table Delete	0
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Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
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